

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 308 of 1993****For Approval and Signature:****HONOURABLE MR.JUSTICE KS JHAVERI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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STATE OF GUJARAT - Appellant(s)**Versus****PATEL CHANDUBHAI RANCHHODBHAI - Opponent(s)****Appearance :**

MR HL JANI APP for Appellant(s) : 1,
 NOTICE SERVED for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI**Date : 25/10/2007****ORAL JUDGMENT**

1.0 This appeal is directed against the judgment and order dated 16.12.1992 passed by the learned Special Judge, Mehsana in Summary Essential Commodities Case No. 7 of 1989 whereby, the respondent – accused was acquitted of all the charges levelled against him.

2.0 The brief facts of the prosecution case are as under;

2.1 On 25.07.1987 the shop of the respondent – accused situated in Village Lanva was inspected by the Deputy Mamlatdar of the appellant – State and the said Officer found certain irregularities in the issuance of bills by the respondent. After completing the necessary formalities, a complaint u/s. 3 r/w. Section 7 of the Essential Commodities Act, 1955 was filed against the respondent before the Court of learned Special Judge, Mehsana. Necessary investigation was carried out and at the end of investigation, charge-sheet was filed against the respondent.

2.2 Trial was conducted against the respondent and in order to prove the guilt of the respondent, the prosecution has examined two witnesses namely, PW – 1 Dilipbhai Damodarbai Pandya at Exhibit – 17 and PW – 2 Natvarlal Manishankar Joshi at Exhibit – 18. The prosecution has also relied upon the documentary evidence from Exhibits 13 to 16 and 19 to 21. At the end of trial, the learned Judge acquitted the respondent of all the charges levelled against him.

3.0 Heard learned counsel for the respective parties and perused the entire documents on record. The principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. This Court has the power to re-consider the whole issue involved in the appeal, re-appraise the evidence and come to its

own conclusion and findings in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record or, in other words, perverse.

4.0 In a recent decision of the Apex Court in the case of ***State of Goa v. Sanjay Thakran & anr. reported in (2007) 3 S.C.C. 755***, the Court has reiterated the powers of this Court in such cases. In Para-16 of the said decision, the Court has observed as under ;

“16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with”.

[Emphasis supplied]

5.0 Similar principle has been reiterated by the Hon'ble

Apex Court in two recent decisions in the cases of ***State of Uttar Pradesh v. Ram Veer Singh & ors.*** reported in ***2007 A.I.R. S.C.W. 5553*** and in ***Girja Prasad (Dead) by L.Rs. v. State of M.P.*** reported in ***2007 A.I.R. S.C.W. 5589***. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

6.0 In the impugned complaint filed against the respondent, it was alleged that the respondent had violated the relevant provisions of the Agreement thereby committing breach of Section 3 r/w. Section 7 of the Essential Commodities Act, 1955. Having gone through the impugned judgment and order passed by the Court below, it appears that the main ground on which the Court below has acquitted the respondent from the alleged offence in question is that the appellant – State has not produced on record any such Agreement, one of the conditions of which is allegedly said to have been violated by the respondent. Apart from that the prosecution has also not produced on record any such Order / Resolution passed by the Government stating that the respondent – accused is found guilty of committing violation of the conditions of the Agreement in question. Further more, the concerned Officer has also stated in his deposition that he does not remember as to whether he had collected the said Agreement from the respondent – accused at the relevant point of time. Keeping in mind the aforesaid lapses in the prosecution case, the Court below has acquitted the respondent of the charges levelled against him.

7.0 In above view of the matter, I am of the opinion that the trial Court was completely justified in acquitting the respondent of the charges levelled against him. In my view, the findings recorded by the trial Court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. I am in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial Court and, hence, find no reasons to interfere with the same.

8.0 I am not discussing the evidence of each witness/s in detail in view of the observations made by the Apex Court in the case of ***State of Karnataka Vs. Hemareddy*** reported in ***A.I.R. 1981 S.C. 1417*** wherein it is held as under:

“... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudhary* (1967)¹ SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice.”

9.0 In the result, the appeal is dismissed. Office is directed to send the Records & Proceedings of the case, if lying with this Court, to the trial Court concerned forthwith.

[K. S. Jhaveri, J.]

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